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HOUSE BILL 1086

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO PUBLIC FINANCE; DESIGNATING THE RETIREE HEALTH CARE
FUND AS AN IRREVOCABLE TRUST; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 10-7C-1 NMSA 1978 (being Laws 1990,
Chapter 6, Section 1) is amended to read:

"10-7C-1. SHORT TITLE.--~~[Sections 1 through 16 of this
act]~~ Chapter 10, Article 7C NMSA 1978 may be cited as the
"Retiree Health Care Act"."

Section 2. Section 10-7C-3 NMSA 1978 (being Laws 1990,
Chapter 6, Section 3) is amended to read:

"10-7C-3. LEGISLATIVE FINDINGS AND DECLARATION OF
POLICY.--

A. The legislature finds and declares that public
employees face a severe problem in securing continuing medical

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1 insurance when they retire. Medical care inflation has far
2 exceeded the general inflation rate for the past decade. It is
3 expected that at least some of the factors that have
4 contributed to this phenomenon will continue into the
5 foreseeable future. As the public employee population grows
6 older, the ratio of retirees to active employees is expected to
7 continue to rise. This factor will be exacerbated as the life
8 expectancy of the aged improves and the post-World War [~~two~~] II
9 generation approaches retirement age. Financial problems faced
10 by the federal medicare system are becoming more serious, and
11 it is apparent that there will be attempts to shift those costs
12 to the public employer and employee. More such cost shifting
13 is likely, and one of the purposes of the Retiree Health Care
14 Act is, within the constraints of what can be afforded by the
15 taxpayers, to alleviate this burden on the retiree as much as
16 possible.

17 B. The legislature further finds and declares that
18 the public employees covered by the Retiree Health Care Act
19 have entered into public employment in circumstances where they
20 have received in exchange for their services a present salary
21 and an expectation of receiving a future stream of benefits,
22 including payment of certain retirement benefits. The
23 legislature declares that the expectation of receiving future
24 benefits may be modified from year to year in order to respond
25 to changing financial exigencies, but that such modification

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1 must be reasonably calculated to result in the least possible
2 detriment to the expectation and to be consistent with any
3 employer-employee relationship established to meet that
4 expectation. [~~The legislature does not intend for the Retiree~~
5 ~~Health Care Act to create trust relationships among the~~
6 ~~participating employees, retirees, employers and the authority~~
7 ~~administering the Retiree Health Care Act, nor does]~~ The
8 legislature does not intend to create contract rights [~~which~~]
9 that may not be modified or extinguished in the future; rather,
10 the legislature intends to create, through the Retiree Health
11 Care Act and the designation of the retiree health care fund as
12 an irrevocable trust as provided in Section 10-7C-8 NMSA 1978,
13 a means for maximizing health care services returned to the
14 participants for their participation under the Retiree Health
15 Care Act.

16 C. The legislature further finds and declares that
17 nothing in the Retiree Health Care Act shall prohibit the
18 legislature from increasing or decreasing participating
19 employer and employee contributions, eligible retiree premiums
20 or group health insurance coverages or plans and that
21 participation in the Retiree Health Care Act by retired and
22 active public employees shall not be construed to establish
23 rights between the retired and active public employees and the
24 state for health care benefits [~~which~~] that cannot be modified
25 or extinguished in the future to meet changes in economic or

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1 social conditions.

2 D. The legislature further finds and declares that
3 the health care coverage provided under the Retiree Health Care
4 Act shall constitute a state group health insurance plan,
5 separate subsequent state group health insurance plan, state
6 group insurance plan, separate subsequent state group insurance
7 plan, state medical group insurance plan and separate
8 subsequent state medical group insurance plan for the purposes
9 of Sections 10-11-121, [~~10-12-15, 10-12A-11~~] 10-12B-16,
10 10-12C-15 and 22-11-41 NMSA 1978.

11 E. The legislature further finds and declares that
12 participation of current retirees in the Retiree Health Care
13 Act is predicated on *State ex rel. Hudgins v. Public Employees*
14 *Retirement Board* 58 N.M. 543, 273 P.2d 543 (1954); the
15 additional monthly participation fee to be paid by current
16 retirees as a condition of participation in the Retiree Health
17 Care Act is in lieu of the lump-sum consideration paid by the
18 retirees who were the relators in that case."

19 Section 3. Section 10-7C-6 NMSA 1978 (being Laws 1990,
20 Chapter 6, Section 6, as amended) is amended to read:

21 "10-7C-6. BOARD CREATED--MEMBERSHIP--AUTHORITY.--

22 A. There is created the "board of the retiree health
23 care authority". The board shall be composed of not more than
24 twelve members, who shall be the trustees of the retiree health
25 care fund and shall have the sole and exclusive fiduciary duty

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1 and responsibility for administration and investment of the
2 fund.

3 B. The board shall include:

4 (1) one member who is not employed by or on
5 behalf of or contracting with an employer participating in or
6 eligible to participate in the Retiree Health Care Act and who
7 shall be appointed by the governor to serve at the pleasure of
8 the governor;

9 (2) the educational retirement director or the
10 educational retirement director's designee;

11 (3) one member to be selected by the public
12 school superintendents' association of New Mexico;

13 (4) one member who is a teacher who is certified
14 and teaching in elementary or secondary education to be
15 selected by a committee composed of one person designated by
16 the New Mexico association of classroom teachers, one person
17 designated by the national education association of New Mexico
18 and one person designated by the New Mexico federation of
19 teachers;

20 (5) one member who is an eligible retiree of a
21 public school and who is selected by the New Mexico association
22 of retired educators;

23 (6) the executive secretary of the public
24 employees retirement association or the executive secretary's
25 designee;

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1 (7) one member who is an eligible retiree
2 receiving a benefit from the public employees retirement
3 association and who is selected by the retired public employees
4 of New Mexico;

5 (8) one member who is an elected official or
6 employee of a municipality participating in the Retiree Health
7 Care Act and who is selected by the New Mexico municipal
8 league;

9 (9) the state treasurer or the state treasurer's
10 designee; and

11 (10) one member who is a classified state
12 employee selected by the personnel board.

13 C. The board, in accordance with the provisions of
14 Paragraph (3) of Subsection D of Section 10-7C-9 NMSA 1978,
15 shall include, if they qualify:

16 (1) one member who is an eligible retiree of an
17 institution of higher education participating in the Retiree
18 Health Care Act and who is selected by the New Mexico
19 association of retired educators; and

20 (2) one member who is an elected official or
21 employee of a county participating in the Retiree Health Care
22 Act and who is selected by the New Mexico association of
23 counties.

24 D. Every member of the board shall serve at the
25 pleasure of the party that selected that member.

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1 E. The members of the board shall begin serving their
2 positions on the board on the effective date of the Retiree
3 Health Care Act or upon their selection, whichever occurs last,
4 unless that member's corresponding position on the board has
5 been eliminated pursuant to Subsection D of Section 10-7C-9
6 NMSA 1978.

7 F. The board shall elect from its membership a
8 president, vice president and secretary.

9 G. The board may appoint such officers and advisory
10 committees as it deems necessary. The board may enter into
11 contracts or arrangements with consultants, professional
12 persons or firms as may be necessary to carry out the
13 provisions of the Retiree Health Care Act.

14 H. The members of the board and its advisory
15 committees shall receive per diem and mileage as provided in
16 the Per Diem and Mileage Act but shall receive no other
17 compensation, perquisite or allowance."

18 Section 4. Section 10-7C-8 NMSA 1978 (being Laws 1990,
19 Chapter 6, Section 8) is amended to read:

20 "10-7C-8. FUND CREATED--INVESTMENT--PREMIUMS--
21 APPROPRIATION.--

22 A. There is created the "retiree health care fund",
23 which shall be an irrevocable trust. All funds, assets,
24 proceeds, income, contributions and payments from any source
25 whatsoever paid to or otherwise accruing to the fund shall be

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1 held in trust for the sole and exclusive purpose of providing
2 group health insurance to eligible retirees and eligible
3 dependents pursuant to the provisions of the Retiree Health
4 Care Act. Assets held in trust are legally protected from
5 creditors of the employers participating in or eligible to
6 participate in the Retiree Health Care Act and from creditors
7 of all members of the board of the retiree health care
8 authority.

9 B. All money in the fund shall be invested as
10 provided for in Subsection [~~D~~] E of this section. All income
11 earned from investment of the fund shall be credited to the
12 fund. Except as otherwise specifically provided [~~herein~~] in
13 the Retiree Health Care Act, the money in the fund is
14 appropriated to the board to carry out the provisions of [~~the~~
15 ~~Retiree Health Care~~] that act. Any funds remaining at the end
16 of any fiscal year shall not revert to the general fund.

17 ~~[B.]~~ C. The board shall provide for the collection of
18 premiums from eligible retirees and eligible dependents, which
19 money when combined with other money appropriated to the fund
20 shall be sufficient to provide the required insurance coverage
21 and to pay the expenses of the authority. All premiums and
22 other money appropriated to the fund shall be credited to the
23 fund.

24 ~~[C.]~~ D. All premiums and other money collected by the
25 authority shall be received and disbursed directly by the

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1 authority. Receipts and disbursements are subject to audit by
2 the state auditor.

3 ~~[D-]~~ E. The board shall determine which money in the
4 fund constitutes the long-term reserves of the authority. The
5 state investment officer shall invest the long-term reserves of
6 the authority in accordance with the provisions of Sections
7 6-8-1 through 6-8-16 NMSA 1978. The state treasurer shall
8 invest the money in the fund that does not constitute the long-
9 term reserves of the fund in accordance with the applicable
10 provisions of Chapter 6, Article 10 NMSA 1978."

11 Section 5. Section 10-7C-16 NMSA 1978 (being Laws 1990,
12 Chapter 6, Section 16, as amended) is amended to read:

13 "10-7C-16. RETIREE HEALTH CARE FUND--BUDGET.--The funds
14 in the retiree health care fund are trust funds and shall be
15 used only for the purposes provided in the Retiree Health Care
16 Act, including reasonable costs of administration.

17 Expenditures for the administration of the Retiree Health Care
18 Act shall be made as provided by an operating budget adopted by
19 the board and approved by the state budget division of the
20 department of finance and administration as provided by law and
21 pursuant to appropriation by the legislature."

22 Section 6. EMERGENCY.--It is necessary for the public
23 peace, health and safety that this act take effect immediately.